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K File No. O. Medical Practitioners/42

legal DEPARTMENT

A. BRANCH

Subject:— Opinions under the B'bay Medical Practitioners Act- 1938

P 14 E

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Std. Sectt. Slip 24 B e.

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Office of the R.L.A.

The questions for the consideration of the Remembrancer of Legal Affairs are-

(1) Whether the recommendation of the Board of Indian Systems of Medicines, Bombay, is essential before the proposed Board of Examinations can be notified by Government in the Bombay Government Gazette;

(2)Whether there is any legal objection to authorising the Tilak Maharashtra Vidyapeeth to hold examinations under section 22(2) of the Bombay Medical Practitioners Act, for a period of one or two years only; and

(3)Whether there is any objection to so authorising the Tilak Maharashtra Vidyapeeth subject to the conditions mentioned in clause (g)of the Board(s resolution at page 97 ante.

QUESTION NO.(1)s- The words"on the recommendation of the Board"in section 22(2)of the Bombay Medical Practitioners' Act,1938 show that the recommendation of the Board would be a condition precedent to Government notifying any institution as being authorisied to hold a qualifying examination. Consequently in the absence of any recommendation of the Board it would not be legally feasible to notify the proposed Board of Examination under section 22(2)as being authorised to hold a qualifying examination.

QUESTIONS NO.(2)s- Power to notify an institution under section 22(2)as being authorised to hold a qualifying examination includes power to notify it for the purpose for a limited period. It would therefore be legal to authorise the Tilak Maharashtra Vidyapeeth under section 22(2)for a period of one or two years only as proposed by General Department.

QUESTION NO.(3)s- No conditional authorisation can be granted under section 22(2). If Government desires that the Tilak Maharashtra Vidyapeeth should be called upon to comply with these conditions before it is authorised under section 22(2).

Sd/- P.N.M.
26-12

Remembrancer of Legal Affairs.

U.R. 20 G.D. No 14 , dated the 3rd January , 1942.

M.R.D.
2-5-56

R.I. NO. 11207
4-12-41.

Submitted.

The Dewan of the Idar State requests that no applications for registration under the Bombay Medical Practitioners Act, 1938, should be entertained from the subjects or that State except on the recommendations by the Dewan. It is pointed outx that on the State having passed a Medical Practitioners Act certain unquallfied persons from the State have got theemselves gegistered under the Bombay Act as Vaids etc. The General Department propose to inform the State Authorities that this Government has no power under the Bombay Medical Practitioners Act, 1938, to entertain applications for registration undersection 16 from the State Subjects subject to the recommendation or the State Authorities. If it is found that registration under section 16 has been secured fraudulently, the Board can cancel such entry from the Register. The question for the consideration of the R.L.A. is whether the view expressed by G.D. is correct.

2. Sub-section(1) or section 16 of the Bombay Medical ~~Practit~~ practitioners Act, 1938, provides that every person who passes a qualifying examination shall be entitled to have his name entered in the register. Under sub-~~section~~ section (2) a person who proves within a period of two years from the coming into force of Part II that he has been practising for a period of not less than ten years preceding the date of his application is also similarly entitled. Under the proviso to sub-section(2) persons having worked as apprentieces or having received training etc. are entitled to registration. Section 18(a) requires the Registrar to prepare and keep a list called "a list of persons in practice on the 10th March 1938". Every person not ~~being~~ being a person qualified for registration under this Acr or the Bombay Medical Act, 1912, who within a period or two years from the coming into force of Pt. II proves that he was in regular practice in the Province on the 10th March 1938, is entitled to have his name entered in the list. The period of two years referred to in sections 16(2) and 18(b) has expired on 4-11-1941. Asx stated by G.D. therefore the question of entertaining applications under these section will not now arise. The only

The only provision for registration now is section 16(1)under which every person who passes a qualifying examination shall on payment of a fee of Rs. 10/-be entitled to have his name entered in the Register. Under this sub-section it is open to a State subject to apply for registration on passing the qualifying examination. The entertainment his application cannot be made subject to the recommendation of the State Authorities. The view expressed in this respect in the concluding portion of the G.D. office note appears to be correct.

3. The G.D.also propose to inform the State Authorities that it is open to them to bring to the notice of the Board of I.S.of medicine ,Bombay any cases of freaudulent registration or enlistment for acton under section 17(3). That Sub-section empowers the Board to cancel or alter any entry in the Register, if in the opinion of the Board, such entry was freaudulently or incorrectly made. This provision also applies to the entires made in the list maintained under section 18. (Vide section18(e)) The view taken by G.D.on this point is also correct.

4. The papers may be seen and returned.

Sd-/
3-1-42

G.A.S. A may be done

Sd-
7-1.

S.S. Sd/-
10-1-42

D.L.A. Sd/- P.M.M
14-1

D.R. to G.D..No.422 dated 16-1-1042.

M.R.D.
2-5-66

R.I. NO. 3998/28-4-42

Submitted.

In May 1941, one Mr. C.J.Parikh had applied to Govt. for recognition of the diploma obtained by him from the School and College of Physicians and Surgeons of Bengal in 1917, uder the Bombay Medical Act, 1912, As that diploma was not recognised as registrable under thatx Act, Govt. invited his attention to section 18of the Bombay Medical Practitioners Act, 1938,and advised him to apply to the Registrar, Board of Indian Systems of Medicine for enrolment of his name. On Mr. Parikh(s further representation in the matter his application was forwarded to the Surgeon General with the Govt. of Bombay for investigation by the Medical Council. The Medical Council did not see fit to recommend the recognition of the qualification obtained by Mr. Parikh under the Bombay Medical Act, 1912 but suggested that the appplicant may apply to the Board of Indian Systems of Medicine for registration under the Bombay Medical Practitioners Act, 1938. Action was however required to be taken accordingly under section 18(b)of that Act before 4.11.41. As that period has expired, the S.G.recommend that the Board may enter Mr. Parikh's name in the list maintained unde under section 18on the strength of the application already made by him to Govt. in May 1941. The question for the consideration of the R.L.A. is whether the suggestion made by the S.G. is legally in order.

2. The suggestion made by the surgeon General with the Govt. of Bombay does not appear to be legally in order. Clause(a)of section18 of the Bombay Medical Practitioners Act, 1938,requires the Registrar to prepare and keep a list called fa list of persons in practice on the 10th March 1938." Clause (b)provides that every person not being a person qualified for registation under the Act or under the Bombay Medical Act,1912,who proves to the satisfaction of the Registrar within a period of two years from the date on which Pt.II comes into force(i.e.upto 4th November 1941) that he has been in regular practice in in the Province on the 10th March 1938,of any system of medicine or surgery or midwifery ee or any of their branches shall be entitled to have his name entered in the list. It would appear from this provision that it was for Mr. Parikh to satisfy the Registrar that he was entitled to registation under the Bombay Medical Practi-

Practitioners Act, 1938. The language of the section appears to be mandatory and as the period prescribed by clause(b)hasexpired it does not appear that anything can be done in the matter. Besides Mr. Parikh(s application of May 1941 was for recognition of his qualification uder under under the Bombay Medical Act, 1912. Section 18 does not require that such a person should have applied before 4th November 1941 but that he should have proved his qualification before that date. In these circumstances the suggestion made by the

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2-5-56

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Mr. Parikh's petition is adressed to the Government of Bombay and is not an application made to the Registrar under the Bombay Medical Practitioners(Act, 1938. It would not therefore be advisable to forward it to the Registrar as if it were an application under that Act. Mr. Parikh may be asked to make a separte application to the Registrar. Since any application that he may now make to the Registrar forenlistment under section 18 would be well beyond the the date fixed for making such application(i.e.4th November 1941) he cannot as of right be entitled to have his name entered in the list on proving that he has been in regular practice on 10th March 1938. Section 18, however, does not debar the registrar from exercising his discretion and considering the belated application on merits.

Sd- P.N.M.
18/6

Remembrancer of Legal Affairs.

M.R.D.
2-5-56

U.O. to G.D.H.No.5001 dated the 18th June 1942.

Submitted.

2. The President of the Board of Indian Systems of Medicine, Bombay say, in para. 2 of his letter at P.1 ante, that it is not clear from sub/sec.(3)of Sec. 3of the Bom. Medical Practitioner's Act, 1938 whether electorate for all the six seeats representing Ayurvedic and Unani registered practitioners shall be a joint one or apparate. The surgeon General is of the view that the members of the Borard are to be elected by all thecx registered practitioners(Ayurvedicand Unani)from amounst themselves and that the electorate is a joint one. The G.D. concurs with this view (P.6 ante.) The question raised for the Consideration of the R.L.A. is whether under sec.3(2)(iii) of the Bom.Medical Practitioners' Act,1938 the election of members on the Board by the the registered practitioners, both Ayurvedic and Unani is to be on the basis of joint or apparate electorate.

3. Sub/Sec.(1)of Sec.3 of the Bombay Medical Practitioners' Act, 1938 provides that subject to the provisions of Sec. 31, the Provl.Govt. shall by notification in the Official Gazette establish a Board to the called #The Board of Indian Systems of Medicine,Bombay,etc. Sub-sec. (2)provides that the Board shall consist of thirteen members in the manner prescribed thereunder. Clause (iii)of sub-sec.(2)provides that seven members shall be elected by the rigistered practitioners from themselves. The proviso to this sub-section provides that for the first and second terms of the Board the President shall be a person nominated by the Provl.Govt. and the number of members elected b the registered practitioners shall be six. The presidant of the Board says that this being the second term the number of members elected under clause(iii) of sub/sec.(2) will be six. Subbsec.(3) provides that the seats of members elected under clause(ii)of sub-sec.(2) shall be so divided amonst the Ayurvedic and Unani registered practiioners as to be <u>in proportion of their numbers</u> on the Register on the on the date of election. The words underlined above clearly show that the number of elected members under clause(iii)of sub-sec(2)will be in proportion to their totel number and will always be a fluctuating factor. The second

proviso to sub-sec(3) provides that the number of members representing registered practioners of either system shall not at any time be less than two. This proviso fixes the minimum of two members for either system although the other elected members may be fluctuating. Sec. 5 provides that the election of such members shall be held at such time and place and in such manner as may be prescribed by rules. Part III of the Bom.Med. Practioners' Rules, 1939 lays down the procedure to be observed for filling vacancies on the Board. Sub-rule (1) of Rule 7 provides that the Electoral Roll shall be prepared by the Registrarfrom the Register. It shall contain the name,qualification and address of every person qualified to vote for the election of a member to fill up the vacancy or vacancies. Sub-rule(7) provides for publication of names of the members nominated. If the intention was to have a separate electorate for each of the systems provision would have been made for maintaining apparate rolls. No such provision appears to have been in the rules also. The Assembly and Council debates do not throw any light on this point. Sub-sec.(3)and thesecond proviso to Sec.3 clearly show that the election of members on the Board by the registered practioners, both Ayurvedic and Unani, will be on the basis of joint electorate. If the intention was otherwise provision would have been made for a fixed number of seats for both the systems. The view taken by the Surgeon General and G.D. at PP. 5-6- ante is correct.

Sd/-
11-7-42

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3-5-56

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether under section 3(2)(iii) of the Bombay Medical Practitioners' Act, 1938 the election of members on the Board by the registered practitioners, bo both Ayurvedic and Unani is to be on the basis of joint or separate electorate.

Clause(iii)of sub-section 2 of secton 3 of the Bombay Medical Practitioners Act, 1938,provides for election of seven members to"the Board of Indian Systems of Medicine Bombay"by registered practitioners from among themselves. Sub-section(3) provides that the seats of members elected under caluse(iii) of sub-section(2)shall be so divided amongst the Ayurvedic and Unani Registered practitioners as to be in the proporation of their numbers on the Register on the date of election. "egistered practitioner" means a practitioner whose name is for the time being entered in the Register(seeesection 2(9)of the Act.) Under section 5 the election of practitioners entitled to be the members of the Board under clause(iii) of sub-section(2)of section 3 shall be held at such time and placeand in such manner as may be prescribed by rules. Sub-rules(1) of rule 7 of the Bombay Practitioners Rules, 1939, p provides that the Electoral Roll shall be prepared by the Registrar from the Register and it shall contain the name, qualifications and address of every person qualified to vote for the election of a member to fill up the vacancy or vacancies. "Register"means the register of practitioners maintained under section 15 (see section 2(8) of the Act.) Sub-rule 7 of elections, the Returning Officer shall send by post to each elector a voting paper. In the form of voting paper in Appendix A to to the Rules no distinction is made between candidates representing the Ayurvedic and Unani registered practitioners. Reading all these provisions together it appears that althought the seats of members elected to the Board are divided amongst the Ayurvedic and Unani registered practitioners still, the electorate is joint and the election is to be held on the basic of joint and not separate electorate. The view taken by the surgeon General in his letter at page 5 ante is correct.

Sd/-P.N.M.
15-7
Remembrancer of Legal Affairs.

M.R.D.
3-5-56

U.R. to G.D. No,5777 dated the 16the July 1942.

R.I. 5877
7-7

Submitted,

2. Please see para.2 of G.D. note at PP.21-23. In R.L.A.[illegible]'s opinion no 5532, 4/-25/7/41 it was held that the term "Province of Bombay" does not include the States of Maharastra, Gujarat, ,Kath'awar and Gwalh Kathiawad and Cutch. Relying on this opinion the G.D. holds the view that the Board of Indian System of Medicne,Bombay constituted under Sec. 3 of B.m. Medical practitioners' Act, 1938 has no power to recognise any teaching institution outside the Province of Bombay. The A(F) doubts this view (Pl.see marginal note at P.21 ante). The questions raised by F.D. for the consideration of the R.L.A. are:-

(1) Whether the degrees or diplomas conferred by institutions outside the Province of Bombay can be recognised for registration under the Bom. Medical Practitioners' Act, 1938,and

(2) Whether the Board can recognise teachinginstitutions outside the Province of Bombay.

3 Questions Nos.(1) and(2):- section 1(2)of the Bom.M.P. Act, 1938, Provides that the Act extends to the whole of the Province of Bombay Under sec.1 (3),Parts I andII shall come into force on such date as the Provl.Govt.may by notification in the official gazette appoint, and part III shall come into fosee in all Municipal, cantonment and notified areas in the Province on the expiry of two years and in all other areas on the expirky of five years from the date on which Parts I and II came into force in the respective areas. These provisions make it clear that the Act is applicable only in the Province of Bombay. Sub-sec.(1)of Sec. 16 provides that every personss who passes a qualifying examination shall shall be entitled to have his name entered[illegible] entered in the register. Sub-sec.22 provides that the Board shall by regulations prescribe the course of training and qualifying examinations including the course of training and examinations prior to qualifying examinations etc. Sub-sec.(2) provides that a qualifying examination shall be an examination in the Indian Systems of Medicine including the subjects of medicine, su surgery and midwifery held for the purpose of granting diploma conferrin the right of registration under this part, by any of the intutions which on the recommendation of the Board may be specified by the Provl. Govt. by a notification in the fficial gaz-tt as being authorised to

as being authorised to hold a qualifying examination. Under sub-sec.(3) it is the duty of the Board to secure the maintenance of an adequate standard of proficiency for the practice of Indian system of medicine and to call on such notified institutions to furnish particulars as the Board shall require of any course of study prescribed by regulations made under Sec.30(1) and to permit Inspectors to attend and be present at all orany of the qualifying or proor examinations. Under sec. 23 , the Provl.Govt. is authorised to remove names of institutions so notified under sec.22.Regulation 1 of the Regulations for the grant of recognition to Teching Institutions framed under 30(1) providing that the Board will grant recognition to institutions giving instruction in the Indian Systems of Medicine subject to the conditions specified in the Second regulation. There is no provision in the the Act or the Regulations made under Sec.30(1) which prevents registration under sec. 16(1) of degrees or diplomas conferred by institutions which are outside the Province of Bombay or recognition of such institutions. although therefore the Act extends only to the Province of Bombay it is open to a state subject to apply for registration on passing thex qualifying examination,prescribed under sec.22(1). (CF.R.L.A.'s opinionNo. 422,d/-161/1952). Similarly any institution in a Native state can be so recognised under Regulation 1 referred to above.

Sd/-
11-7

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The first question for consideration is whether the Board can recognise teaching instituions outside the province. The recognitition of such an institution is legally permissible. The object of the Act is not to regulate medical practice outside the Province of Bombay. But mere recognition of teaching institutions outside the Province of Bombay for the purpose of the Act does not involve the exercise of any jurisdiction outside the Province. There would be no question of compelling by means of legal sanction the institutions whether inside or outside the province to any course of action. The Board recognises teaching institutions on mertain conditions. If the institutions whether inside or outside the Province fail to observe those conditions the only step which the Board can take is to withdraw its recognition.

2. The second question for consideration is whether the degrees or diplomas conferred by the institutions outside the Province of Bombay can be recognised for registration under the Bombay Medical Practitioners' Act, 1938. Section 21 of the Act Provides that the expirty of two years from the date on which the Act came into force a person shall not be entered in the Register as a registered practitioner unless he has passed qualifying examination. A "qualifying examination" is defined in section 2(7) as an examination held for the purpose of granting a diploma conferring the right of registration under the Act. Sub-section(1) of section 22 provides that the Board shall by regulations prescribe the course of training and qualifying examinations including the course of training and examinations prior to qualifying examinations and that such regulations shall provide that instruction and examinations shall, as far as possible, be given or held in any of the Indian languages spoken in the Province. Sub-section(2)further provides that a qualifying examination shall be an examination in the Indian Systems of medicine including the subjects of medicine, surgery and midwifery held for the purpose of granting of diploma conferring the right of registation under this Part, by by an y of the institutions which on the recommendation of the Board may be specified by the Provincial Government by a notification in the Official Gazette as being authorised to hold a qualifying examination. If follows from these provisions that the holders of degrees or diplomas conferred by institutions whether

whether inside or outside the Province should not be entitled to registration under the Act unless such degrees or diplomas were obtained by passing a qualifying examination. It will be necessary to amend the Act if a degree or diploma not obtained by passing the qualifying examination is to be recognised for the purpose of registration.

Sd/-P.M.M.
12-8

Remembrancer of Legal Affairs.

U.R. to G.D. No.6548, dated the 13th August 1942.

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